THE CORDIALL OF Mr. David Ienkins: OR HIS REPLY To *H. P.* Barrester of *Lincolnes*-Inne, ANSWERED.

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Printed for *Robert Bostock*, dwelling in *Pauls* Church-yard, at the signe of the Kings Head. 1647.

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Master JENKINS his REPLY Answered.

IN all the Papers which *M J.* weekly almost publishes (to slander and condemne the Parliament of Rebellion, Perjury, Oppression, Cozenage, &c.) his maine artifice, and that which most infects the people, is, his blending and confounding things together, which are in nature different, and by all meanes ought to be discriminated. In three things especially his want of ingenuity is most obvious, and his not distinguishing most advantagious to him. For, first, He puts no difference betwixt that latitude of power which is due to a just King in just things, and when he pursues the true interest of his people; and that power which consists in doing wrong. And yet nothing is more notorious then this, that the Kings of *England* have vast Prerogatives in doing good, but none at all to do any man, much lesse the whole State, harme. Secondly, He distinguishes not betwixt those actions of the Subject which are done in times of necessity, and upon extraordinary

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extremities; and thoſe which are done in ordinary times, when there is no ſpeciall emergent cauſe to inforce them. Thirdly, He compares not the ſmaller matters of the Law with the weightier, but attributes to both alike; nay, when both cannot conſiſt or take place at the ſame time, he makes the weightier Law give way to that which is of leſſe conſequence, and may be reckoned, *inter apices juris*. The Law will admit of a private miſchiefe rather then a publike inconvenience; as nature will ſuffer this particular quantity of water contrary to its owne propenſity to be violented and rapt upwards, rather then that any vacuity ſhould be in the univerſe. But *M. J.* ſometimes will indure publike miſchiefe, rather then private inconveniences; he will rather allow that *Salus Populi* ſhall be oppoſed, then ſuch or ſuch a branch of Prerogative, or the propriety of the Subject ſhould be ſtrained. Law is not ſo dull a ſtudy as ſome men would have it, nor are its bounds reſtrained to the ordinary actions and pleas of *J. a Nokes* and *J. a Stiles*, about a carve of ground, &c. no; the profeſſion is farre more noble, and as its *baſis*, is reaſon improved with Logick, ſo its *pyramis* is policy crowned with Hiſtory and Philoſophy. That Lawyer therefore that will argue upon this high ſubject, which *M. J.* now undertakes, ought to roote himſelf deeper, before he begins to build up his argument, and to take notice of theſe premiſſes:

1. That all men who are qualified, and exalted to beare rule in a ſpheare above other men, are ſo dignified and differenced by ſome Commiſſion; which Commiſſion muſt be granted by man immediately,

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or elſe by God extraordinarily, and immediately.

2. That in this age (which knowes of no Oracles, or miracles remaining) God does not immediately, and otherwiſe then by the ſame providence (as rules in other humane affaires) either deſigne the perſons, or diſtinguiſh the Prerogative of any Kings or Potentates. God is not ſaid more properly to promote to the Crowne of *England Edward* the fourth, then *Henry* the ſixth; nor to make a King of *France* more unlimitable then a King of *England*: Theſe things are left to men, the ſame providence of God attending them, as attends other matters. Yea, the Scripture is moſt cleare in this, that when God by immediate and extraordinary orders from heaven did interpoſe in deſigning *Saul* to the Throne of *Iſrael*, yet he did it by lottery, and did it ſo, that *Saul* might be ſaid elected, and conſtituted by the people, as well as deſigned by God. And indeed ſince all Princes, whether hereditary, or elective, whether more abſolute, or more conditionate, whether inthroned by juſt Title, or by tortion, and meere force, have Commiſſions equally from Heaven: How can we thinke that Heaven acts immediately alike in all? ſince *Cyrus* is as well Gods anoynted in thoſe Provinces which he wins by the ſword, as in thoſe which come to him by deſcent; and the French King is as truly Gods Vicegerent now in *France*, as *Charles* (whom he has intruded upon) is in *England*; and ſince the King of *Spaine*, by ſpeciall Law of Heaven, can claime no larger ſupremacy in *Caſtile*, then in *Burgundy*, in *Naples*, then in *Arragon*; what an unreaſonable thing is it, to aſcribe all theſe devolutions of rule, and variations

of power to the immediate hand of God, which changes not, rather then to the acts of men, which are seldome permanent?

3. That if we will suppose that Princes Commissions are all immediately drawne and signed by God, yet we cannot suppose that Gods Commission ever inabled any man to do injury; his charge to all Kings is contrary, and does inhibite all insolence in comportment, nay even all elation of heart. And for man, (so far as Princes are inaugurated upon earth) we see by experience they all almost have their visible Territories, and Boundaries set to them; and it were most unnaturall if the intendment of all humane Lawes should not referre to the safety of the people.

4. That if any obscurity or ambiguity be in other Lawes, yet in the Lawes of *England* there is none at all. All our Books proclaime our Nation to be a free Nation, and our Kings to be limited from doing any wrong. And because there may be dispute about the interpretation of these generalls, therefore particulars are deduced out of them, and our Lawes do not onely declare us free, but wherein our freedome consists; nor do they binde the King from wrong, but specifie withall, what is wrong to the Subject. If the King arbitrarily change our Lawes, raise Subsidies, impose Taxes, imprison our bodies, deny, delay, or sell justice to us; this is declared to be wrong, and inconsistant with our freedome. And if any question arise about our Charters, the King himself cannot interpret, or sit as Judge, he is in all cases taken to be a party, and so incompetent to sit as Judge. His sworne Judges are to do right betwixt him and

the Subject out of Parliament, and the two Eſtates are to do right above the Judges, if need be, in Parliament. And in caſe of any perplexity or doubt, the liberty and ſafety of the people is to be preferred before the Prerogative of the King; and all interpretations muſt rather favour that intereſt which is generall, then that which is particular. And for the Military power of *England*, as the King ought not to uſe any other then the naturall Liege people of *England* in his Warres; ſo neither can he preſſe the people of *England* to ſerve in his Warres at diſcretion. If the Warre be forraigne, or againſt a forraigne power, the Parliament ought to be conſulted in it; but if force be to be uſed againſt Subiects, that force is to be meerely ſub-ſervient to Law, and whether it be to execute ordinary Judgements, or to ſuppreſſe Riots, or Inſurrections (how dangerous or great ſoever) the Sheriffe, and other ordinary Officers of Juſtice ought to be imployed in the buſineſſe, and thoſe which are ſo imployed are to be directed ſolely by the Judges and Courts of the Land in ſpeeding Law, and not at all by any extrajudiciall command of the King in oppoſition to Law: If theſe things were not ſo, the King of *England* could not be reſtrained from doing wrong, our Kings would be above all Law, and the Law could have no power above them, and if our Kings were above Lawes, and not reſtraineable thereby from doing wrong, the people of *England* were not a free people, but as remedileſſe Slaves, as the Grand Signiors Vaſſells are. Our Lawes provide againſt ſervitude in us, but that were vaine if they did not provide alſo for efficacy in themſelves, in ſo much

much as Lawes, if the King were above them, and so might alter them at pleasure, or interpret them according to his owne sence, or could execute, or not execute at discretion by being sole Master of the sword, would be no better then Cobwebs to us.

By the light which reflects from these fundamentalls premised, we shall now the better view and examine that which Mr. *Jenkins* replyes to the eight particulars of *H. P.*

In the first particular the question is, Whether the House of Commons have power to examine a Delinquent or no, Mr *Ienkins* holds the negative upon this ground, that they have neither the Kings Writ, Patent, nor Commission for it. It was answered, That they did both sit and act by the Kings Writ, and something greater then the Kings Writ. Mr *Ienkins* not being able to deny that the Parliament was summoned by the Kings Writ, and that it is continued still by an Act passed since, onely quarrells at the Act of continuance, pretending that the Act by which this Parliament is continued agrees not with the Act passed lately for a Trienniall Parliament, nor with that for an Annuall Parliament, passed in *Edw.* the thirds time, as also that it is mischievous, otherwise by Protections, Priviledges, &c. Is not this to quarrell with the King and both Houses? Is not this to tell us that Mr. *Ienkins* is wiser then all the three Estates, though joyned together? The King, the Lords, and Commons judged that this Act did agree with the other two, yet Mr. *Ienkins* judges contrary. The King, the Lords, and Commons judged the advantage of this Act to be greater then any inconveni-

ences,

ences, Mr. *Ienkins* is of another minde. Our Bookes have a Rule, That no man ought to be wiser then Law; Mr. *Ienkins* exempts himselfe out of this Rule; but in the next place, whatsoever the three Estates may doe, yet Mr. *Ienkins* tells us, that the two Houses make no Court, nor Body Corporate, nor Parliament without the King, no more then a man remaines a man without a head; Here is the mistake, Mr. *Ienkins* thinkes the King is a head to the Parliament *simpliciter*, or *phisicè*, whereas he is so but *secundum quid*, or *metaphorisè*, for if he were such a head to the Politick Body, as the true head is to the naturall Body, the body could have no subsistence without him; but experience in our case teaches us the contrary, and we can easily calculate that if the whole Royall Line should be spent, and the Crowne Escheat sitting a Parliament, the Lords and Commons would remaine a living Parliament, and be the supreame power of the Kingdome without a King: Also if this should happen out of Parliament, the Lords joyning with the chosen representants of the whole Kingdome would be equally as competent (if not more) for all Acts of Majesty, and supreame dominion as now they are in Parliament. Mr. *Ienkins* must needs also know, that there are some Acts of Parliament yet of force in this Land, which by the Lords and Commons were carried and consummated, not onely without but even against the King; but I forbeare to draw Censure upon my selfe by citing them; and whereas it was objected, That the Parliament was in a meaner condition then other inferiour Courts, if the Kings meere discretion could so make

their deliberations voyd and vaine. Mr. *Ienkins* replyes, That this is moſt true and juſt, for as much as in other Courts the King can neither judge nor controle; but in the Court of Parliament (*quoad Acts*) the King is both Judge and Controller. And why cannot the King judge and controle in the ordinary Courts? becauſe there they have the Kings power committed to them by Patent, and as they are ſworn to doe right, ſo the King is ſworne not to interrupt or fruſtrate them. Thus:

1 We ſee the Kings Patent to a few men is more vigorous, then the moſt honourable Writ of the Law is when it is directed from the King to all the Peeres, and Commons of the Land abetted beſides with formall Statutes.

2 We ſee an Oath taken from the Judges is of more valew then the faith and loyalty of the whole people.

3 We ſee the King by his Coronation Oath is ſtronglier obliged not to obſtruct Juſtice in private caſes, depending before lower Courts, then the generall ſafety and welfare of the people in that Treſhault Counſell, which is ſo honourable that none ought to thinke ignobly of it.

4 We muſt grant, that Mr. *Ienkins* can better tell what the Law is in this point then both Houſes.

5 Whereas an Argument *Ab inconvenienti* was valid in Law before, now an Argument drawne from the ſafety and liberty of the whole State, and from the end of all Law is made rediculous by Mr. *Ienkins*; for he which grants we are borne to liberty and ſafety as our right, yet grants no meanes to attaine to

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that right, nor remedy to recover it, except the Kings Grace, and even then the Grand Seigniours Subjects have their Masters grace and discretion to depend upon as well as we.

Thus is our state like a goodly Ship, exquisitely decord, strongly man'd, and abundantly riggd with all kinde of Tackling; and so built for agility in faire weather, that nothing in that respect can be added to her perfection; yet still she is so moulded by these kinde of Royalists, that the least foule weather oversets her. We have excellent Lawes to secure our proprieties against the Crowne; we have excellent Priviledges in Parliaments to secure our Lawes against the Judges, and other Ministers of the Crowne; and yet nevertheless the Parliament it self is so discontinuable, dissolvable, and controllable by the Crown, that our all which depends upon it, has nothing in the last place, to make it self good to us, but the favour of the Crowne.

Thus may our Lawes and Priviledges, in which there is acknowledged to be a directive, but no coactive force over the King, be compared to an imaginary Mathematicall Line in the heavens, but not to any fence or circumvallation upon the earth: Well may they informe the King what we ought to injoy, as the Lawes of God and nature without them do to all other Nations; But they can never assure us what we shall enjoy. And therefore I wonder why the Royalists should so much extoll the rare Constitution of this Kingdom, when besides some other flowers of the Crowne, they ascribe to the King such a negative voyce in Parliament, as is sufficient alone

to destroy all that is granted us in all things else. But to returne to our Reply.

'Tis maintained next, that whatsoever power is in both Houses, yet there is no power in the House of Commons to examine at all, because the House of Commons cannot administer an Oath; and examination without Oath is a meere communication, and rejected as unprofitable in Law.

One reason why the House of Commons cannot examine upon Oath, is because it is no Court; and it appeares to be no Court, because it has no power of tryall, nor ever practised any such power, by Bill, Indictment, Information, Plaints, or Originall. And for the Lord *Cookes* Relation, that the House of Commons have imposed Fines, and imprisoned men in Queene *Elizabeths* time, and since; He saies these are but late, and a few matters of fact, and *à facto ad jus* is no good argument. Here we see though the greatest plea against the House of Commons is the non-use of any such power, yet when the non-user is proved, then 'tis objected, That it is but of late times, and illustrated but by a few presidents.

A second reason against the House of Commons being a Court, is because it has neither the Kings Patent, nor any Statute nor common usuage to make it so. The House of Lords is acknowledged to be a Court of Record to many purposes, partly because the King sits there, and partly because there is cleere Law for their Priviledges; but the House of Commons is excepted against (as not within these reasons.) The truth is, both Houses are but one Court, and one Councell, and the time has been when they have

have both ſate in one place together; and there may be good reaſon given why they may ſit ſeverall and have their priviledges kept diſtinct; and why the Lords ſhould be more active in ſome matters of judgement, where the whole Commonalties intereſt is not touched: But this is no proofe, That what the Lords act by themſelves, receives no influence from the Houſe of Commons; Or that the Houſe of Peeres is of more value in the eye of the Law, or has any greater juriſdiction by the Law, then the Repreſentative Body of the whole State. As for the Kings ſitting in the Houſe of Lords, there is but little moment in that, in regard that he ſits not there to judge, or to debate, but onely to propoſe and conſent. And there is no Law to debarre him from the like in the Commons Houſe; and ſo it was when both Houſes ſate together, and ſtill is when they meet together. And ſecondly, whereas ſome Patent, Statute, or Uſage, is demanded from the Houſe of Commons, in maintenance of their judiciall power, This we ſay is unreaſonable: Nay, if any Patent, Statute, or Uſage, could be produced for preferrence of the Peerage before all the Knights, Gentlemen, and Commons of *England* in this point; that were rather to be rejected, as moſt unjuſt and unnaturall. A third reaſon is brought againſt the Houſe of Commons out of the Writ of Summons, foraſmuch as in that Writ, the King reſolves, conſults, and treats with his Peeres, *ſuper arduis regni*, but the Commons are called *ad faciendum & conſentiendum in iis quaribidem de communi concilio ordinari contigerint.* Theſe words of the Writ, though they are generall, and in

ſome things ambigious, yet they are no more diſadvantagious to the Commons, then to the Lords or King. But if words are to be interpreted by the practiſe of Parliaments, and by the tenour of all our other Lawes, we ſhall finde that the Kings part is to propoſe and conſent, but not to debate; that the Lords part is to propoſe, debate, and conſent in ſome things, but not in all: that the Commons part is to propoſe debate, and conſent in all. And this appeares by the raiſing of Treaſure, the grand concernment of the Kingdom, called juſtly, *Ornamentum pacis & firmamentum belli* and in this, though the King and Lords may propoſe & conſent, yet none but the Commons may propoſe, debate, and conſent. From reaſoning Mr *Jenkins* now betakes himſelf to rayling, and tells both Lords and Commons, that whatſoever their Writ meant, they act now quite contrary; for by their Writ they were required to treat and conſult with the King, concerning the King, the defence of the Kingdome, and the Church; whereas they firſt imprison the King, next arme the Kingdome for themſelves againſt the King, and laſtly demoliſh the Church by aboliſhing Biſhops, Deanes, &c.

For the firſt, the King left them unconſtrained, and deſerted *Weſtminſter*, whether they were ſummoned to attend him, and after tooke Armes to diſſolve them; but thoſe Armes being now broken, the Parliament keepes him from raiſing new broyles, but ſo farre are they from refuſing to treat with him, that they prepare Propoſitions for him, and reject no meſſages or Letters that come from him; neither is the Kings reſtraint properly to be called impriſonment,

ment being much different therefrom, both for the manner and for the end of it; the manner of it is ingenuous, and accompanied with many accommodations, which thousands of other Free-men, nay Gentlemen of *England* cannot attaine too; and for his Attendants, they are truly his Servants, and as observant in all Offices compatible with the peace of the Kingdome as ever he had any. The end of his restraint also is not to incommodate him in any degree, there is nothing aymed at in it but to preserve the Kingdome from new disturbance, till he appeares fully reconciled, and to preserve him from drawing prejudice upon himselfe. For the second, since 'tis not for the Kingdoms damage, nor the King's that future Commotions be suppreſt; the Lords and Commons could no way better satisfie the intent of their Summons, then by suppressing Commotions by the same posture of defence as they now are in. I could wish also, that Mr. *Ienkins* would understand, that as the Kingdome is called the Kings, so the King is called the Kingdoms; and that propriety which the Kingdome has in the King, is more tenderly to be expounded then that which the King has in the Kingdome. For the third, that the word Church should onely be applyed to Church-men, or the word Church-men to Bishops, Deanes, &c. is more then the Law teaches: and if the businesse be studied well 'twill not be found a thing impossible, as Master *Ienkins* supposes for the Parliament to abolish Bishops, Deanes, &c. and yet to advance Church-men, or to take away some of the excessive Grandour of Church-men without any destruction to the Church.

2 Thus much of Mr. *Ienkins* Reply to the first particular, I come now to his second, where he takes it ill, that in cases of pardons the King should be thought to be vertually in the two Houses, for as much as that power he sayes remaines solely in the King, and therefore cannot rest at all in the two Houses.

That the power of pardoning Delinquents is so in the King solely, as that he cannot derive the same to the Parliament as he does his other power is not proved by Mr. *Ienkins*, nor can it be possibly proved, and that the King does not derive the same (as he does his other) is as farre from being proved also; for doubtlesse in all Acts of Oblivion, the two Houses convey an additionall vigor, and so make the Acts more vertuous then the Kings meere Act could doe, and therefore this new vigour which is conveyed by the Houses, if it be not that which is derived from the King, as Mr. *Ienkins* Tenets deny, then it flowes naturally and originally from the two Houses; and what can Mr. *Ienkins* cause gaine by this? But sayes Mr. *Ienkins*, The King is a Prisoner, and so having no power but what is divested by his imprisonment, the power of the Houses is usurped by themselves, and not derived by the King. The block which Mr. *Ienkins* here stumbles at is this; He thinkes an imprisoned King has no power at all, or remaines indeed no King, but this is not absolutely true of all Kings imprisoned, for as our case is, either imprisonment is something more then that which our King suffers, or else imprisonment as to some Acts may stand with freedome as to other Acts. I have touche upon this

subject

ſubject already. But let Maſter *Ienkins* bee as bitter as he pleaſes in his cenſures and reproaches, 'tis not intended by the two Houſes that the King ſhould be diſabled from doing any acts of juſtice and piety, 'tis only from raiſing new Forces, and begetting new concuſſions, that this new guard deſires to prevent him. Maſter *Ienkins* next ſayes, that the King may revoke and diſcharge his Commiſſions at pleaſure, but what of this? the queſtion is, whether or no the King may fruſtrate and elude his Commiſſions; and this Maſter *Ienkins* ſpeakes not directly to. Wee need not quarrell therefore further about this, we will grant to Maſter *Ienkins* that Parliaments may be juſtly determined and diſſolved by our King, provided he will grant to us that the ſame may be juſtly fruſtrated or eluded. But Maſter *Ienkins* ſtomacks much at our calling the two Houſes a Parliament, and cenſures it in us as a great deluſion, although we know well that nothing is more common in ſpeech, then to ſay that the King cals his Parliaments, writes to his Parliaments, diſſolves his Parliaments, &c. The King muſt be taken abſtracted from that which he cals, writes to, and diſſolves, or elſe wee muſt conſider him calling himſelfe, writing to himſelf, diſſolving himſelfe, which cannot be without abſurdity. Beſides, when we ſpeake of the great Councell of the Kingdome, we meane the Parliament abſtracted from the King, foraſmuch as the King in Parliament does not ſo properly give as receive Counſell, and why we may not aſwell call the two Houſes a Parliament, as the great Councell, treſhault Court, or mickle-gemot of the King and Kingdome, I cannot deviſe. The Law ſayes the King cannot be abſent from his Parlia-

ament; this muſt be meant authoritatively, not perſonally, for divers of our Kings have been in *France* ſitting Parliaments here, and yet even they were politically preſent, though phyſically abſent, as Maſter *Ienkins* himſelfe muſt needs grant. Now if the Parliament be the Kings Court or Councell, and ſuch a Court or Councell as he cannot virtually bee abſent from, though in perſon he be often diſtant, and at ſome time muſt not be otherwiſe, how can it be maintained by Maſter *Ienkins* that the two Houſes are not the Parliament? Another objection of Maſter *Ienkins* againſt the two Houſes is, that they were deſerted by divers of their own Members, who in conſiderable numbers went to the King at *Oxford*; but this is no other objection then might be made againſt the Husband, when the wife elopes and withdraws from his bed; ſhall that party which remaines conſtant, and attends duly at the place aſſigned in the ſummons for tranſacting of that buſineſſe which was ſpecified in the ſummons, ſuffer for that parties ſake which proved inconſtant, and neither obſerved the place nor buſineſſe of the writ by which it was convened? ſure this is moſt unreaſonable; doubtleſſe when the King cald theſe uncertaine members *mungrels*, who together with their whole faction would neither be cordially true to Religion and Liberty at *London*, nor totally conſent to ſubvert them at *Oxford*, hee had more reaſon on his ſide then Maſter *Ienkins* has, who diſparages thoſe that kept their ſtations becauſe of the defection of their *mungrell*-brethren. In the laſt place Maſter *Ienkins* though he confeſſes that the common Law did alwayes reſtrain our Kings from all tallages & ſubſidies but by conſent in Parliament, as doth

appeare

appeare by *Magna Charta*; yet he ſayes this is no conſequence, becauſe the King cannot take the ſubjects goods at pleaſure, therefore the Commons have a concurrent power with the King in Parliament; indeed this conſequence is ill-framed, but in its right forme it appears thus; if the Commons in Parliament have that great power to raiſe treaſure out of the whole Kingdome, which the King has not out of Parliament, then they muſt deduce this power from themſelves, or thoſe whom they repreſent, and not from the King, who cannot give that which he has not in himſelfe; but ſo it is that the Commons have this power, *Ergo*. If Mr. *Ienkins* will anſwer this hee ſhall befriend my intellect. The laſt objection which Maſter *Ienkins* makes againſt this concurrent power of the Commons in granting ſubſidies is this, that Parliaments may be held, and be complete Parliaments without ſubſidies, and hereupon he tels us that former Parliaments rarely granted any unleſſe in time of forrain Warres; and *Q. Eliz.* refuſed a ſubſidie granted, & *K. Ia.* in his firſt year had none granted him. Is there any ſolidity in this objection? I appeal to all ingenuous men, Parliaments may be without ſubſidies, *Ergo* the granting of ſubſidies is no act of power in Parliaments; or thus, giving of ſubſidies is an Act of power in Parl. but ſince at ſome time it may be diſuſed and intermitted, or is a power that at ſome times is not reduced into acts, therefore it is no power, or not inherent in the people, but onely derivative from the King. Let Maſter *Ienkins* apply his owne words to himſelfe here, for certainly hee ought to make a conſcience of blinding the people with ſuch untrue colours to the ruine of King and Kingdome.

3. The third particular now offers it ſelfe in order,

and here Master *Jenkins* his reply ought to prove that if the two Houses had a Parliamentary power in themselves, they needed not send Propositions to the King, but instead of opposing this (which was the only thing made good by his answerer) he diverts his force to oppose the equity and justice of the Propositions sent to his Majesty. This is not to reply to his Answerer, but to satisfie his owne peevish disposition; yet since hee may abuse the people aswell when he railes as when he argues something must be returned in answer to him. After he has magisterially condemn'd the Propositions in general as being contrary to law, he vouchsafes at last thus particularly to interrogate us: Have the two Houses a strict right to lay upon the people what taxes they judge meet, have they power to pardon all Treasons, &c. *subintelligitur* without the Kings consent? We answer they have not any such ordinary power; but if the Kingdomes safety lye upon it, and the King will not concurre in saving the Kingdome in an ordinary way, they may have recourse to extraordinary meanes for the saving of it · ordinarily the people may not take up Armes, but in case of extraordinary invasion by forrain or domestick force they may justifie taking up of Arms, and when War it selfe is justifiable, all the necessary concomitants and expedients of a politick war are justifiable. Nature has confined water to a descending course, yet not by such a rigid Law, but that for the necessary subvention of the whole Fabrick, and for the avoiding of that vacuity which Nature more abhors then the dispensation, or temporary suspension of such, or such a particular inferiour Law, this ponderous element may forsake its ordinary course, and mount upwards.

wards. In a Village where houſes ſtand ſcatter'd and remote, 'tis not lawfull for me to demoliſh this houſe, becauſe that which ſtands next it is all of a flame, but in a Citie this is lawfull where the houſes are ſo conjoyned, that the flame of one houſe may extend it ſelfe to the conſuming or indangering of a whole ſtreet or more. It is not generally lawfull for me to judge my neighbour unheard, or to execute my neighbour unjudged: Yet if I find my neighbour ingaged in ſuch a Treaſon as *Faulx* was, and ready with his Match to give fire to ſuch a Traine of Powder as he had layd, and have no other meanes to prevent him, I may runne upon him with my Sword, and make my ſelfe both his Judge and Executioner. Now if Maſter *Ienkins* will ſay, that ſuch extraordinary acts as theſe are warranted by Law, I ſhall cõply with him, yet I conceive tis not upon any particular Law, but upon the generall law of publick ſafetie that theſe warrants are grounded upon; & if I am not miſtaken, tis rather policy, then Law, that admits of ſuch ſtrange deviations from the common practice and rule of Law. But ſayes Maſter *Ienkins*, theſe propoſitions cannot paſſe into Statutes but by the Kings concurrence, and has not the King a free power to aſſent, or diſſent in thoſe things which muſt receive their being from his concurrence? Or is the ſeeking of the Kings concurrence nothing but a meer Complement? We anſwer, The King has a power to aſſent and diſſent: yet without any impeachment of his libertie, he may, nay he muſt, aſſent to ſuch Bills as are for the publicke good, and to diſſent from ſuch as are tending to the publicke detriment; the reaſon is, becauſe the free choice of the King is to receive its determination from without from

the matter of the Bills, not from within, or from the propension of his owne will: for the will injoyes a more perfect libertie when it is attracted, and as it were necessitated by that object which is good, then when it is left to its owne equilibrious motions, and so wavers indifferently betwixt good and evill. If it be said, that in the choice of that which is good, the King cannot so well satisfie his own judgement by the advise or reason of other men, as by that which is dictated to him by his owne breast: It must be answered, first, in the grand concernments of the Kingdome, wherein the King has not so great a share as the people has, tis more just that the reason of two Estates be satisfied, then his. Secondly, in cases where the King is severally interessed, his particular interests ought to succumbe and give a preference to the generall. Thirdly, either the matter in debate is intricate, and admits of doubts, or not; If there be doubt in it, then the King ought not to oppose his single judgement, or rather opinion to the resolution of the Highest Court and Councell of the Kingdome: If there be no doubt in it, (an accident sure very rare, that the Lords and Representants of a whole State should judge a thing to be advantagious, when the King knowes it certainly to be disadvantagious) then the King is to consider whither the matter in question be necessary or expedient, if it be expedient onely, then the King ought not to contest about it, forasmuch as that contestation may be more inexpedient for the State then his concession. But if it be necessary (as the cause of true Religion, &c.) where the King being Orthodox, knowes his Subjects to be blinded with Idolatry or Heresie, and cannot without sin give his Royall

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assent to such irreligious Bills, as they present; then as it were impious in him to signe them, so it is outragious in him to disturbe the publicke peace about them. The reason of this is, because Polititians guide themselves rather by the calculation of what is probable then what is possible onely, and therefore though it be possible that a King with one eye should see more then a Parliament with many, yet since this is not probable, there is scarce any State but chuses rather to be swayd by the counsells of many then by the counsell of one, and where the counsell of one claimes a prevalence above the counsells of many, 'tis not obey'd without great reluctance commonly, and publicke disturbance. Besides, if one mans eyes perchance see more then the eyes of many (as is very rare, though not impossible) yet tis very strange that that one mans discovery should not open the eyes of other standers by without force, in respect that light is a thing lovely to all, and ready to be imbraced upon the least glimpse of it, and a very little thereof being let in through a narrow cranny, may make all that is contained in a very wide roome visible. And if one man possibly in things indifferent should see more then many, yet tis very neere to an impossibilitie, that one man should apprehend truth more then many, where that one man has more prejudice against the truth by selfe-intereſts, then the many. And who can doubt, but that Princes, as Princes, are more drawne by the byas of selfe-intereſts against that which is the good of the communitie, then that Court which is not onely by the vertue of representation, but even naturally also in some degree the communitie it selfe? The root sends juice and nourishment to the branches, but

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expects none backe from them; and the fathers love has a ſtrong aſcent towards the fruit of his body, but weake and virtuleſſe is the deſcent of that juice which falls from the branches to the root, or of that love which the ſonne refunds upon his progenitors; and even ſo it is in the relative Offices of Prince and Subject, the Prince lookes leſſe tenderly upon the people as being his root or parent, whilſt yet the people lookes more tenderly upon the Prince, as its owne ſtemme and iſſue. Hence it is, that all States are accounted more or leſſe ſlaviſh, as their Princes are more or leſſe arbitrary in their ſupreme counſells; and all men are accounted more or leſſe miſerable, as they are more or leſſe ſlaviſh. What became of *Rome*, and of the whole world that was ſubject to *Rome*, after it was once yoked by the *Cæſars*, who might arbitrarily wave the advice of the Senate, & conſult with Slaves, Eunuchs, Women, Panders, &c. or what brought us to all our late bloody cataſtrophes, but the diſcountenance and deteſtation of Parliaments? Aske the Lord *Digby* himſelfe, and even his Speeches made in Parliament ſince *November* 1640. will informe us, that there were many cauſes of our miſeries, but the cauſe of all thoſe cauſes was the abandoning and diſguſting of Parliaments: Sure the Lord *Digby* may paſſe as an Authentick teſtimony for our ſide, and yet even the Lord *Digby*, before he turn'd Courtier, had the ingenuitie to reſent this Kingdomes ſervilitie, when a woman of a falſe religion, hoſtile nation, and adverſe affection, together with her Jeſuiticall traine, had more predominance in our publicke affaires, then the two Eſtates aſſembled in Parliament. But Maſter *Jenkins* will ſtill ſay, that the King is aſſiſted

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with his Judges, and other Counsell both Spirituall and Temporall, and that the House of Commons in some debates may be divided unto two or three oddes voyces; and therefore why may not the King so assisted be better advised then those two or three oddes voyces? This is an old objection, and seemes plausible, but is easily answered: For 1. It is very unequall that a few Counsellours whom the King chuses should be preferr'd before many whom the Kingdom chuses, in those matters which import the Kingdome, more then the King. 2. If the Kings Councell in the House of Peers were equally to be valued with the House of Commons, yet still so long as it is left arbitrary to the King to follow their advice, or not, the Kingdome is in the condition as *Turky* is, where the Grand Signior is left onely to consult with himselfe or any of his Concubines or Eunuchs. And lastly, there can be no lower or baser degree of slavery imagin'd, then for a Nation to be subjected to a Lord that is so absolute in the highest results of State, as that he may use no Counsell, or make choyce of what Counsell he pleases.

4. I hast now to the fourth particular, where M. *Ienkins* affirmes againe, that the two Houses do separate the Kings power from his Person as the *Spencers* did; and from thence frame the same three condemned conclusions as they did. The separation of his Person from his power is proved, partly by imprisonment of his Person, and partly by usurping all his power; for M. *Ienkins* tells us, that the two Houses counterfeit a Seale of their owne, and thereby seal Writs, make Judges, settle Courts, and this is done contrary to the Kings consent, not declared only by Letters, Ministers, and word of mouth, but by his true great Seale of *England*.

It is here, 1. To be noted, that M. *Ienkins* himselfe does now distinguish betwixt that which the King declares by word of mouth personally, And by Letters and Ministers extrajudicially; and that which he declares legally by his Writs, and judicially by the great Seale: and this is a plaine concession,

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that the Kings Perſon may urge one thing, and his Office another; that his perſonall command may be unjuſt and not to be obeyed, at the ſame time that his regall command may be juſt, and neceſſarily muſt exact obedience. It is to be noted 2. That the reaſon alledged, why the Kings commands in this warre are legall and juſt, not perſonall and unjuſt, is, becauſe they were authoriz'd and fortified with the true great Seale: and what is this but to proclaime, 1. That the great Seale of *England* is ſolely at the Kings diſpoſe, to be imployed according to his meere diſcretion: 2. That the meet annexion of the great Seal makes any Act of the Kings legall and authenticall: 3. That M. *Ienkins* is better able to judge of the two great Seales which is the true one, then the two Houſes of Parliament? When M. *Ienkins* will be as learned in proving, as he is audacious in preſuming, theſe new quaint poynts, we ſhall know what to anſwer; In the meane time we will expatiate no further then his diſcourſe leades us. As for impriſoment of the Kings Perſon, we have anſwer'd to that already, and foraſmuch as the keeping Chaplaines from him is objected, we anſwer thereunto, that not Chaplaines, but ſuch and ſuch Chaplaines, *viz.* ſuch as the State judges Incendiaries, are deny'd, and there is no more injuſtice in reſtraining ſuch Incendiaries then in reſtraining Commanders and Armes. Now to parallell the Houſes with the *Spencers*, M. *Ienkins* ſayes, that they having declared his Majeſtie to have broken his truſt touching the government of his people, they have rayſed Armes to take him, they have taken and impriſon'd him, they governe themſelves, they make Lawes, impoſe Taxes, make Judges, Sheriffs, and take upon them *Omnia inſignia Majeſtatis*, and is not this ſayes he to remove the King for miſdemeanours, to reforme *per aſpertee*, to governe in aide of him, the three concluſions of the *Spencers*? M. *Ienkins* here, as if he had abjured all ingenuitie, confounds diverſe things which he knowes to be exceeding different in nature. For 1. He takes no notice whether the force which has

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bin used by the Parliament be offensive, or defensive; and yet none can be ignorant, how many things may be justified in a defendant which cannot by the offendant. 2. He distinguishes not betwixt that force of the defendant, which aimes only at a temporary securance against the Assaylant, & that which proposes to it self vindication or reparation by the total removall, or destruction of the Assaylant. He knows well, that the *Spencers* aimed at a totall dethronization of their Master, whilst the Parliament aimes at nothing but beating down that Sword which was drawn against them. 2. That the *Spencers* intended to levy offensive Arms, for reforming that in their Master *per aspertee*, which was not so dangerous to their persons and lives, as that which has bin contrived and enterprised against this Parliament; for not onely a partie of 300 Armed men to seize and teare five principall Members out of the House, (and by consequence to menace all that retained any freedome in them) but Armes were solicited to attempt against this Parliament before they thought of any force; and this is far above those provocations which were pretended by the two *Spencers*. 3. The *Spencers*, by pretext of governing in aide of the King, intended to oppresse all the Nobility, Gentry, Communaltie of the Land, but this is impossible to be suspected in a Parliament, which consists of the choice, and are a considerable part of all these.

5. The 5. particular now offers it selfe, wherein Mr. *Ienkins* maintaines that every King of *England*, and only the King in *England* can grant pardons, and that in all cases, and for this he cites *Stanfords* pleas 99. It was not, nor is denied to M. *Ienkins* that the Kings of *England* have power to pardon delinquencies, so farre as themselves are parties suffering. But the question is whether the Kings of *England* onely can, and alwayes can pardon delinquencies, and whatsoever Master *Ienkins* thinkes, the authorities of *Stanford* and *Dier* are not full to prove the affirmative, and certainly if it were *proprium quarto*

modo for the Kings of *England* to pardon in all cases, it were very unproper for generall acts of indemnity to be passed by all three estates, *frustra fit per plura, quod fieri potest per pauciora*; if one of the estates be sufficient; to what purpose doe the other 2 concurre? Secondly, all remedy by appeale would be cut off from subjects. For either my appeale must make void the Kings pardon, or if the Kings pardon be not void in this case, and as to this murder committed, my appeale must be dismissed. It had been candid in Mr. *Ienkins* if he would have replied some thing to this objection about appeales, for now it may be supposed he replied nothing therein, because he could reply nothing to the purpose; besides, if the Kings pardon cannot frustrat my appeale (as Mr. *Ienkins* knowes well it cannot) why should the same destroy the remedy and justice that is due to a whole state? Treason may be committed against the State aswell as against the King, even as murder may damnifie me aswell as the King, and shall it be held lesse contrary to justice that the State should be deprived of its remedy by the Kings pardon, then that I should? Good Mr. *Ienkins* policy is not to be superseded by Law, but Law is to be improved by policie: and as in quiet times and private cases 'tis safer to follow Law then Policy, so in times of troubles, and in affairs of generall and great concernment, 'tis safer to observe Policy then Law. The same may be said of not pardoning, for doubtlesse the King has as much latitude to refuse, as to grant pardon, yet when his power in either may be mischievous, his power in both must submit to reason of State, and Law is not violated, but better improved when true reason of State takes place above it.

6. I am now to proceed to the sixth particular, where Mr. *Ienkins* will not indure that the King shall be said to retain the right or habit of governing, at the same time when he is said not to be actually in a condition to govern; he intimates that the Law makes no such distinction, & infers *ubi lex non distinguit*,

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non est distinguendum: by this it should seem it is not allowable that a Lawyer should make use of any distinctions, for which he has not some book authority, though the difference of things be never so pregnant. A misererable confinement to Lawyers, and sure 4 or 500 years past if Lawyers had been so confined, wee had now left us no prints of any distinctions at all. All other Schollars besides Lawyers, nay all Lawyers that are not meer Lawyers, (I meane by meer Lawyers, such as have made no improvement of their reason by Logick, Policie, and other humane literature) are of a contrary opinion, and hold it more true, *qui bene distinguit, bene docet*. But what a ridiculous thing is this, because *Hen. 6.* lying in his cradle not able to speak, write, read, or do any act of power, has a right to governe, therefore I must grant hee is in a condition to govern, for feare of distinguishing when the Law does not distinguish? so of *Edw. 2.* and *Ri. 2.* because they had a right to the Crown, in that moment of time when they abdicated the same, and pronounced themselves unfit to governe, therefore I am obliged to believe that they were not abdicated nor made unfit for government. Next Mr. *Ienkins* likes not this distinction that the King is not barred simply from returning to his Parliament though he be barred *secundum quid*, that is from returning unreconciled or armed against his Parliament, hee professes that he and the whole City knowes the contrary; how the City should know the Parliaments intentions so exquisitly, or M. *Ienkins* be assur'd of the Cities knowledge so infallably I cannot imagine; but I wish M. *Ienkins* which takes upon him to be a Priest as well as a Lawyer by vertue of *Iustinians* Commission, were such a Priest indeed, as that we might expect nothing but knowledge and truth from his lips.

7. The seventh particular comes now in order, where M. *Ienkins* puts us in minde of the oath of Supremacy, taken by all members of the House at their first sitting, and askes *H. P.* why he stiles the King Supreme governour in all all causes and

over all persons, &c. and leaves out onely Supreme? surely not to detract any thing from the Kings celsitude, but because the word seemed superfluous; for he that swears the King to be Supreme over all persons, sweares him to bee only Supreme over all persons, inasmuch as there cannot be more Supreme persons over all then one; but away with these frivolous logomachies. The argument runs thus, If the King be only Supreme governour in all causes, then in Parliament causes, if over all persons, then over both Houses, and if so, then how is he become a prisoner, and how doe the Houses Act by vertue of their prisoners writ? It was answered before that the King is granted to be Supreme or only Supreme over all persons, but particular still *& non*, and not beyond the Law, nor beyond that community for which and by which the Laws themselves were made. The Duke of *Venice* (the like may be said also of all elective conditionate Kings and Potentates) has no person in any cause whatsoever superior, or equall to him: yet he has his bounds set him by the Law; and as the Law is above him whom it bounds, so that power which can make, and alter Law in *Venice*, is above the Law it selfe. M. *Ienkins* himselfe confesses that the King is not above the Law, nor above the safety of the people; but in regard that the King is Supreme in all causes, aswell Parliamentary as other, and over all persons, aswell the Lords and Commons in Parliament as others, M. *Ienkins* supposes there is no other Judge of the Law, & safety of the people but the K. but this is not to be admitted by us, because we know wel that whosoever is the Supreme judge of the Law, if not directly, yet he is consequentially above all Laws, and whosoever is above all Law cannot bee restrained by the safety of the people, though the most sublime of all Laws. Wherfore if this be admitted true of our King, that he is Supreme Judge of Law, then it must follow that the Subject of *England* has no more assurance of Law or safety then what is founded onely in the Kings breast, and discretion. For the Kings

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being a prisonet that has been already answered, and indeed it is is more truly said that his hands are held and diſweapond, then that his ſeet are fetterd, or his head undiademnd. Then for the Parliaments acting by the Kings writ, there ought to bee ſome miſtakes cleered therein alſo; for we doe grant that the writ is the Kings, the Great Seale is the Kings, that Officer which has the Cuſtodie thereof is the Kings, the People are the Kings; but we doe not grant that any of theſe are ſo the Kings, as that they are not the Kingdomes alſo in a more eminent degree: for as the Husband is the Wifes truly, but not ſo eminently as the Wife is the Husbands, ſo the Kingdome is the Kings, and the King is the Kingdomes, yet the Kingdomes intereſt and relation farre more valuable and ſublime.

8. The laſt particular now offers it ſelfe in the cloſe of all, and here M. *Ienkins* does not deny expreſly that many things may be good in Law notwithſtanding that ſome formalities, or thoſe things which we terme *ſpices Iuris* are wanting; for doubtleſſe where 2 Laws are and both cannot be fulfilled, the leſſe important Law though it be more particular muſt give way to the more important Law, though more generall. *ex. gr.* when the King dies, by the common Law in force, Parl. ceaſe, all Judges, Sheriffs & Officers not abſolutely neceſſary &c. return to a privat condition, and ſo remaine till new Commiſſions obtained: but if the new King happen to be beyond ſea, as at the death of *Hen.* 3. ſo that new Commiſſions cannot be immediatly granted, and thereupon the greater Law of publick ſafety is brought into competition with the Law of an inferiour nature, a new ſeal may be made, new Judges, new Officers may be created, and either a former Parl. may be continued, or a new one ſumond, and all neceſſary points of complete adminiſtration may bee expedited as in probality they were before the arrivall of *Ed.* 1. God did not make any particular diſpenſation his ſhew-bread might be eaten by common perſons if in diſtreſſe, or the golden veſſells of his Temple aliend when the City was

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to be redeemed from the insolence and rapines of a prevailing Enemy, the generall Law of necessity was sufficient to warrant both the one and the other, but I will presse this no further since M. *Ienkins* alledges nothing to shew why a Parl. which cannot deliver it selfe by an Act, may not use meanes to deliver it selfe by an Ordinance. I will not insist further hereupon. But instead of disputing, M. *Ienkins* seems to jeere us for setting up Excise, raising Armes, Taxing the people, imprisoning the King, abolishing the Common Prayer Book, selling Church-Lands, &c. and in an irony he concludes, that all these are in order to publick justice and safetie. M. *Ienkins* here leaves us upon uncertainties, whether he condemnes our Cause because it required such props, or onely these props because they assisted us in promoting so bad a cause. If he allow of the ends, but not of the meanes, if he allow we may defend the Lawes and safetie of the State, but not by Armes, or if he allow of Armes but not of Taxes, &c. He must renounce a rule naturall as well as logicall, *Qui dat finem, dat media conducentia ad finem*. If he allow of the meanes, but not as conducing to such an end, upon presumption that our Lawes, and the State were not indanger'd, or if he prove that they may not be defended, he takes upon him more then is due; for his part is to plead, not to judge and answers might be given to his pleading, but nothing can be said to his judging.

I conclude therefore with the L. *Cookes* Senture of Treason: as M. *Ienkins* does, and am of the same opinion, that Treason ever produces fatall and finall destruction to the offendor, and never attaines to its desired ends; and wish that all men for this Cause would serve God, honour the King, and have no company with the Seditious. Yet let me adde this, we have neighbours now in the *Netherlands*, that lately have revolted from their Master, and yet prosper and flourish beyond all in *Europe*: the justice of their revolt may be questioned by some, but I for divers reasons do not question it, & one amongst the rest is this of the L. *Cookes*, because I think an act meerly treasonable cannot prosper.

FINIS.